

CONTRACT ON A FUTURE CONTRACT IN COMMERCIAL RELATIONS UNDER THE LAWS OF THE CZECH REPUBLIC AND OF ENGLAND AND WALES

The aim of this rigorous thesis was to describe the current statutory provisions relating to an agreement on future agreement according to the Act. No. 513/1991 Coll., the Commercial Code of the Czech Republic, as amended, to distinguish its provisions in comparison with the provisions on agreement on future agreement according to Act no. 40/1964 Coll., the Civil Code, as amended, and from the act no. 89/2012 Coll. the proposed new comprehensive Civil Code, as amended to point to certain areas of legislation which are not sufficiently clear, to provide suggestions for dealing with them, and to compare them to the current law in England and Wales regulating similar institutes under the Common law, such as for example an option, or a forward agreement.

The method used was description with the use of available specialist literature and case law (bearing in mind case law is not a source of law in the Czech Republic per se, and form only a supportive role, while in England, case law is one of the sources of law viewed from normative approach), and in cases where legislation and case law could not provide a sufficient answer, author gave his own opinion on the given matter with his reasoning for it.

The agreement on future agreement according to provisions of Czech Commercial Code must, in order to be valid, be made in writing, contain obligation of at least one party to conclude future agreement that must be described at least generally.

The obligation to conclude future agreement expires, besides general ways of expiration, also by frustration, i.e. by such a change of circumstances, that has the parties know such circumstances would occur prior to concluding the future agreement, they would under such circumstances never have concluded the agreement on future agreement. The obligation to conclude the future agreement also expires by failure of the entitled party to invite the obliged party to conclude the future agreement in time agreed for it.

The case law of Czech courts concludes that even if the future agreement must follow the Civil Code, the agreement on future agreement may follow Commercial Code.

Czech case law also does not permit for transfer of rights from an agreement on future agreement to a third party, stating that rights and obligations from an agreement on future agreement are inseparable in their nature. The author hereof does not concur and points out to general principle of freedom of parties to contract.